

The Roots of Credit Inequality

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Author's Note: This article is the first in a series arguing that the United States has used debt as a tool of racial subordination throughout its history, from colonization to the present. Oppression through debt is unconstitutional under the Thirteenth and Fourteenth Amendments. This article covers the time period between settlers' arrival to Emancipation in 1863.

CONTENTS

INTRODUCTION	26
I. THE ROLE OF DEBT IN COLONIZATION.....	31
A. Missionization	33
B. President Jefferson: Run Them Into Debt.....	35
C. Trader Nation	39
D. Financial Deserts	41
II. DEBT DURING ENSLAVEMENT	44
A. Enslaved People's Market Participation	45
B. Home Ownership.....	50
C. Banking.....	52
III. CREDIT DISCRIMINATION VIOLATES THE RECONSTRUCTION AMENDMENTS	53

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INTRODUCTION

In the song *All Falls Down*,¹ rapper Kanye West (now Ye) explores the intersections of wealth, credit, enslavement, and racism.

We shine because they hate us, floss 'cause they degrade us /
We tryna buy back our 40 acres
And for that paper, look how low we'll stoop /
Even if you in a Benz, you still a n**** in a coupe...

We buy our way out of jail, but we can't buy freedom /
We'll buy a lot of clothes, but we don't really need 'em
Things we buy to cover up what's inside /
'Cause they made us hate ourself and love they wealth
That's why shorty's hollerin', "Where the ballers at?"

Drug dealer buy Jordans, crackhead buy crack /
And a white man get paid off of all of that

But I ain't even gon' act holier than that /
'Cause fuck it, I went to Jacob² with 25 thou'
Before I had a house, and I'd do it again /
'Cause I wanna be on 106 & Park,³ pushin' a Benz

I wanna act ballerific like it's all terrific /
I got a couple past-due bills, I won't get specific
I got a problem with spendin' before I get it /
We all self-conscious, I'm just the first to admit it⁴

The lyrics describe an economic and social system that glorifies materialism while denying elevated status to Black people even when they acquire external manifestations of worth. West traces modern obstacles to Black people's access to wealth and credit back to the Reconstruction government's rescinded promise to compensate enslaved people with land and a way to work that land: "40 acres" and a mule.⁵ This betrayal still

1. KANYE WEST, *All Falls Down*, on *The College Dropout* (CD, Roc-A-Fella Records Feb. 10, 2004).

2. "Jacob" refers to "Jacob the Jeweler," an elite jeweler known for designing iconic pieces for celebrities. *See generally* Jacob & Co, <https://jacobandco.com/> [<https://perma.cc/6V9Q-B9WP>] (last visited Sep. 14, 2025).

3. "106 & Park" refers to the music countdown show *106 & Park* that aired on BET (Black Entertainment Television) from 2000–2014. The BET studio was located on an East Harlem street corner at East 106th Street and Park Avenue. BET ARCHIVES WIKI, https://bet-archives.fandom.com/wiki/106_%26_Park (last visited Sep. 14, 2025).

4. WEST, *supra* note 1.

5. Order by the Commander of the Military Division of Mississippi, Special Field Orders, No. 15 by Major General W.T. Sherman, 1865, <https://www.freedmen.umd.edu/sfo15.htm> [<https://perma.cc/6VZX-4KCR>] (last visited Oct. 14, 2025).

resonates over a century later. Lamenting reliance on credit and the shame it brings, *All Falls Down* identifies borrowing beyond your means as a problem. But the credit industry doesn't see it that way. Instead, it actively targets consumers who never pay in full. The industry's best customers regularly put money toward interest but not their principle, accumulating late and overdraft fees that trap them in a perpetual debt cycle.⁶

From credit terms to collection, Black, brown, and Indigenous people fair worse than white people. They have the least access to reputable financial institutions;⁷ the worst credit terms,⁸ even when their risk profiles are identical to or better than white borrowers' profiles⁹; the highest medical¹⁰ and student debt;¹¹ the highest rates of debt collection¹² and default judgments;¹³ the highest use of fringe lending outlets, payday lending,¹⁴

6. Robert Adams, Vitaly M. Bord & Bradley Katcher, *Credit Card Profitability*, BD. GOVERNORS FED. RSRV. SYS., FEDS NOTES (Sep. 9, 2022), <https://www.federalreserve.gov/econ-notes/feds-notes/credit-card-profitability-20220909.html> [<https://perma.cc/ZV5G-UE9G>].

7. Raphaël Charron-Chénier, *Debt-Based Welfare: Debt-To-Asset Relationships Across Black and White Households in the United States*, SOCIOLOGICAL FORUM 39:94–109 (2024); Kendall Little & Christopher Murray, *Credit Card Statistics by Race and Ethnicity*, BANKRATE (June 7, 2023), <https://www.bankrate.com/credit-cards/news/credit-cards-and-race-statistics/> [<https://perma.cc/QB8G-9M32>].

8. Ethan Cohen-Cole, *Credit Card Redlining* 4 (Fed. Rsr. Bank Boston, Working Paper, Paper No. QAU08-1, 2008) (on file with the Seattle University Law Review).

9. *Id.* at 14.

10. Sean Hubbard, Ph.D., *Not Enough: Medicaid Expansion, Medical Debt, and Cost Avoidance in Rural American Indian and Alaska Native Households*, 41 J. RURAL HEALTH e12925 (2025); Kathryn Houghton & Arielle Zions, *Native American Patients Are Sent to Collections for Debts the Government Owes*, KFF HEALTH NEWS (Dec. 16, 2024), <https://montanafreepress.org/2024/12/16/native-american-patients-are-sent-to-collections-for-debts-the-government-owes/> [<https://perma.cc/T3KP-ZLT3>].

11. Ali Mir & Saadia Toor, *The Business of Stealing Futures: Race, Gender, and the Student Debt Regime*, 193 J. BUS. ETHICS 765 (2024).

12. Paul Kiel & Annie Waldman, *The Color of Debt: How Collections Suits Squeeze Black Neighborhoods*, PROPUBLICA (Oct. 8, 2015), <https://www.propublica.org/article/debt-collection-law-suits-squeeze-black-neighborhoods> [<https://perma.cc/FGA2-RTFB>]; Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1251, 1268 (2022).

13. Brito, Sabbeth, Steinberg & Sudeall, *supra* note 12, at 1268, 1284.

14. CENTER FOR RESPONSIBLE LENDING, PAYDAY AND VEHICLE TITLE LENDING DISPROPORTIONATELY HARM COMMUNITIES OF COLOR, EXPLOITING AND PERPETUATING THE RACIAL WEALTH GAP (2020), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-payday-cartitle-comm-of-color-nov2020.pdf> [<https://perma.cc/B6EV-75AK>].

cash checking,¹⁵ and pawn shops;¹⁶ the worst mortgage approval rates,¹⁷ car loan approval rates,¹⁸ and bankruptcy agreements;¹⁹ the highest car prices,²⁰ and the highest insurance premiums.²¹ This two-tiered credit system receives support from stereotypes found in media and popular culture that characterize wealth inequality as a reflection of personal and cultural differences rather than structural oppression. This article argues that racialized debt is a systemic harm dating back to colonization and enslavement that violates the Thirteenth and Fourteenth Amendments.

Debt oppression began before the United States became a country. Settlers enslaved Africans and Indigenous people, treating them as

15. Emily Flitter, *Banking While Black: How Cashing a Check Can Be a Minefield*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/business/banks-black-customers-racism.html> (on file with the Seattle University Law Review).

16. Patricia D. Posey, *Information Inequality: How Race and Financial Access Reflect the Information Needs of Lower-Income Individuals*, 707 ANNALS AM. ACAD. POL. & SOC. SCI. 125, 125–41 (2023), <https://journals.sagepub.com/doi/epdf/10.1177/00027162231219551> (on file with the Seattle University Law Review).

17. See generally Neil Bhutta, Aurel Hizmo & Daniel Ringo, *How Much Does Racial Bias Affect Mortgage Lending? Evidence from Human and Algorithmic Credit Decisions* (Bd. Governors Fed. Rsr. Sys., Finance & Econ. Discussion Series, Working Paper No. 2022-067, 2022), <https://www.federalreserve.gov/econres/feds/files/2022067pap.pdf> [<https://perma.cc/2F6E-7VF4>].

18. Alexander W. Butler, Erik J. Mayer & James P. Weston, *Racial Disparities in the Auto Loan Market*, 36 REV. FIN. STUDS. 1, 1–41 (2023), <https://academic.oup.com/rfs/article/36/1/1/6588701> [<https://perma.cc/GZQ5-D6LD>] (finding that Black and Latine applicants' approval rates are 1.5 percentage points lower than white applicants', even after controlling for creditworthiness, crowding out 80,000 minority loans per year). Results are stronger where racial biases are more prevalent and lending competition is lower. Minority borrowers pay 70-basis-point higher interest rates, but default less, consistent with racial bias rather than statistical discrimination. A major antidiscrimination enforcement policy initiated in 2013, but halted in 2018, reduced unexplained racial differences in interest rates by 60 percent. *Id.* Jonathan Lanning, *Evidence of Racial Discrimination in the \$1.4 Trillion Auto Loan Market*, 1 PROFITWISE NEWS & VIEWS 1 (2023), <https://www.chicagofed.org/publications/profitwise-news-and-views/2023/discrimination-auto-loan-market> [<https://perma.cc/HK9C-PR7R>].

19. MELISSA B. JACOBY, UNJUST DEBTS: HOW OUR BANKRUPTCY SYSTEM MAKES AMERICA MORE UNEQUAL 38–40 (2024).

20. Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817 (1991), <https://ianayres.yale.edu/sites/default/files/files/Fair%20Driving.pdf> [<https://perma.cc/476A-8KMD>].

21. Andrew V. Simpson, *Blacks and Hispanics Pay More For Auto Insurance. Study Tries to Answer Why*, INS. J. (Nov. 21, 2024), <https://www.insurancejournal.com/news/east/2024/11/21/802047.htm> [<https://perma.cc/2Q3U-HGGN>] (citing D.C. DEP'T INS., SECS. & BANKING, REPORT ON MARKET CONDUCT EXAMINATION: EVALUATING UNINTENTIONAL BIAS IN PRIVATE PASSENGER AUTOMOBILE INSURANCE (2024), https://disb.dc.gov/sites/default/files/dc/sites/disb/page_content/attachments/Unintentional_Bias_Report-final.pdf, finding that Black drivers pay, on average, 1.46 times more than white drivers, equating to an average annual premium gap of \$326. Latine drivers pay 1.20 times more than white drivers, and API (Asian-Pacific Islander) drivers pay the same as white drivers, resulting in an average annual premium of \$705 for white drivers, \$1,031 for Black drivers, \$849 for Latine drivers, and \$722 for API drivers); Poonum Desai, *Study: Drivers in Less-White Zip Codes Pay More for Auto Insurance*, MONEYGEEK (Oct. 28, 2024), <https://www.moneygeek.com/insurance/auto/study-communities-color-pay-higher-premiums/> [<https://perma.cc/5Y6F-J3B2>].

property that they could buy and sell for their economic and personal benefit. When enslavement became illegal, new economic systems and laws that included sharecropping, Black Codes, and Jim Crow kept Black people in servitude. Laws that prohibited enslaved people from owning property or selling goods to white people evolved into restrictions on Black people's occupations and market participation, both formal and informal. When Black entrepreneurs overcame these obstacles and built wealth within Black business enclaves, white people enforced their racist norms through violence.²² Segregated access to credit and different credit terms and conditions in retail, housing, and government loans played a large part in maintaining racial wealth gaps throughout the twentieth century.

In 1974, a feminist movement to democratize credit culminated in the Equal Credit Opportunity Act.²³ The new law initially appeared to take a giant step toward extending credit beyond the cadre of wealthy, white men who comprised credit cards' first consumers.²⁴ Forced to accommodate new customers, the industry adopted an innovative business model. Instead of relying on merchant fees for profit, it imposed fees designed to squeeze small amounts of money out of its less affluent borrowers.²⁵ As

22. See, e.g., VICTOR LUCKERSON, *BUILT FROM THE FIRE* (2024); CARLOS MORENO, *THE VICTORY OF GREENWOOD* (2021).

23. Andrea Freeman, *Racism in the Credit Card Industry*, 95 N.C. L. REV. 1071, 1119 n.300 (2017) (citing *Fair Credit Billing: Hearing on S. 65 Before the Subcomm. on Fin. Insts. of the Comm. on Banking, Hous., & Urban Affairs*, 92d Cong. 59–64 (1971) (statements of Agnes D. Jeffrey, Phyllis Thompson, and Catharine Pszwaro) (collecting statements of women who experienced difficulty with credit card companies); FLORA DAVIS, *MOVING THE MOUNTAIN: THE WOMEN'S MOVEMENT IN AMERICA SINCE 1960*, at 147–52 (1st ed. 1991); LIZABETH COHEN, *A CONSUMERS' REPUBLIC: THE POLITICS OF MASS CONSUMPTION IN POSTWAR AMERICA* 368–70 (2003) (describing the greater access men had over women for home mortgages and credit); KIMBERLY A. REED, *MANAGING OUR MARGINS: WOMEN ENTREPRENEURS IN THE SUBURBS* 129–30 (2013).

24. Freeman, *supra* note 23, at 1121 nn.308–10 (2017) (citing Equal Credit Opportunity Act, § 701, 88 Stat. at 1521–22; *Credit Discrimination: Hearings Before the Subcomm. on Consumer Affairs of the H. Comm. on Banking & Currency*, 93d Cong., 2d Sess. pt. 1, at 41 n.307 (1974) (statement of John H. Powell, Jr., Chairman, Equal Emp't Opportunity Comm'n) (“[I]t is very likely that the inability to obtain credit, or if obtained, the discriminatory terms and conditions which accompany its extension to certain groups in our society, are directly related to discrimination in employment.”); *id.* at 131 (statement of Hon. Arthur S. Flemming, Chairman, U.S. Comm'n on Civil Rights, and Comm'r, Admin. on Aging, Dep't of Health, Educ. & Welfare); *id.* at 131–37 (statement of Hon. Arthur S. Flemming, Chairman, U.S. Comm'n on Civil Rights, and Comm'r, Admin. on Aging, Dep't of Health, Educ. & Welfare)).

25. Freeman, *supra* note 23, at 1079 n.37 (citing Andrea Freeman, *Payback: A Structural Analysis of the Credit Card Problem*, 55 ARIZ. L. REV. 151, 153 (2013) (“Although most economists and legal scholars view the ‘credit card problem’ of excessive consumer debt as one of market failure, it is in fact a story of overwhelming market success. Through the use of sophisticated underwriting technology, the credit card companies learned that consumers who are on the verge of bankruptcy represent their greatest source of profits. The industry responded to this information by completely altering its business model. Instead of seeking customers who would pay off their bills at the end of each month, known in the industry as convenience users or *deadbeats*, the companies began to target low-income consumers who would maintain balances from month to month, known as *revolvers*.”) (footnotes

credit cards evolved from a convenience to a necessity, most users had no choice but to pay late fees and high interest rates.²⁶ Behavioral economics provided strategies for preying on cognitive deficiencies to attract customers through predatory tactics like teaser introductory interest rates of 0% and mass mailings of pre-approved cards. Lack of disclosure requirements allowed credit card companies to offer different terms to different customers based on opaque assessments of their default risk.²⁷ Stereotypes about Black people's financial ignorance that emerged after Emancipation to justify persistent social exclusion rationalized equating Blackness with high risk, perpetuating a racially disparate credit system.²⁸

omitted) (first quoting Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373, 1374 (2004); then citing Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373, 1379 (2004); then citing Ronald J. Mann, *Bankruptcy Reform and the "Sweat Box" of Credit Card Debt*, 2007 U. ILL. L. REV. 375, 385–91; and then citing Adam J. Levitin, *The Antitrust Super Bowl: America's Payment Systems, No-Surcharge Rules, and the Hidden Costs of Credit*, 3 BERKELEY BUS. L.J. 265, 317–18 (2005)); Freeman, *supra* note 23, at 154 ("Consequently, low-income consumers now receive credit cards with high fees and interest rates, while higher-income consumers reap the rewards of credit card use, such as travel miles and concierge services. Credit card companies target vulnerable consumers for inferior products through tactics such as teaser rates, mass mailings of preapproved cards, . . . overly complex credit card agreements, and credit-card redlining. As a result of these practices, 80% of the industry's profits now come from interest payments and . . . fees instead of annual and interchange fees. This shift represents a massive redistribution of wealth from the poor to wealthier consumers and corporations.") (citing U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-929, CREDIT CARDS: INCREASED COMPLEXITY IN RATES AND FEES HEIGHTENS NEED FOR MORE EFFECTIVE DISCLOSURES TO CONSUMERS 67 (2006)).

26. Freeman, *supra* note 23, at 1096 n.141 (citing Freeman, *Payback*, *supra* note 25, at 166–68; Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373, 1392–93 (2004)). Although amendments to the CARD Act eliminated some of the more egregious fees, late fees and rising interest rates continue to be a problem. *Id.* (citing AMY TRAUB & CATHERINE RUETSCHLIN, DEMOS, THE PLASTIC SAFETY NET: FINDINGS FROM THE 2012 NATIONAL SURVEY ON CREDIT CARD DEBT OF LOW- AND MIDDLE-INCOME HOUSEHOLDS 24 (2012), <http://www.demos.org/sites/default/files/publications/PlasticSafetyNet-Demos.pdf> [<https://perma.cc/T6YT-8QSG>]).

27. Freeman, *Payback*, *supra* note 25 (citing Ronald J. Mann, *Patterns of Credit Card Use Among Low and Moderate Households*, in INSUFFICIENT FUNDS: SAVINGS, ASSETS, CREDIT, AND BANKING AMONG LOW-INCOME HOUSEHOLDS 252, 257 (Rebecca M. Blank & Michael S. Barr eds., 2009), <http://www.columbia.edu/~mr2651/CreditCardsforthePoor.pdf> [<https://perma.cc/72WW-F6YF>]).

28. *Id.* at 185 n.243 (discussing the Black consumer myth as understood by historian Ted Ownby in *American Dreams in Mississippi*, stated as "the proverbial fool to be soon parted from his money"); see also Jason Chambers, *Equal in Every Way: African Americans, Consumption and Materialism from Reconstruction to the Civil Rights Movement*, 7 ADVERT. & SOC'Y REV. (2006), <https://muse.jhu.edu/article/202983> [<https://perma.cc/4U5G-FUME>] (surveying Black people and materialism from the end of the Civil War through the end of the Second World War). Chambers describes consumption as a tool of anti-oppression:

[B]lack people have long understood the difference between materialism and a materially-intensive life and have used goods as a way to demonstrate their desire to be equal in every way with their fellow [white] citizens. Hence, consumption becomes a means of political and social activism on par with other better-known efforts such as the battle for voting rights or an end to racial discrimination.

Id.

This system is a vestige of slavery that violates the Thirteenth Amendment. And the laws and policies that uphold a segregated credit system that harms Black, Indigenous, and Latine consumers violate the Fourteenth Amendment's Equal Protection clause. These constitutional violations require strong remedies that include an amnesty on past debts, rehabilitative reparations, and a reimagining and restructuring of our credit system. This article documents the early roots of the United States' use of debt as a tool of oppression. Part I explores the role that debt played in colonization up to 1863. Part II examines how debt supported enslavement. The Conclusion argues that the United States' long history of weaponizing debt renders modern laws and policies that support segregated debt systems unconstitutional vestiges of colonization and slavery.

I. THE ROLE OF DEBT IN COLONIZATION

Imposing coercive debt on Indigenous people played a vital role in the settler colonialist project of stealing land from and subjugating Indigenous nations. From 1699 to 1763, French colonizers competing with English settlers used credit to exploit and manipulate the Natchez, Choctaw, and Chickasaw nations in Louisiana.²⁹ Before the settlers' arrival, these nations engaged primarily in hunting, gathering, and agriculture, occasionally bartering for items that they exchanged for a "just price," considered fair by all parties.³⁰ The French introduced them to the European market economy, where prices reflected production and shipping costs in addition to an item's value. Many French goods appealed to Indigenous people, including woolen and cotton cloth, which fared better in Mississippi's climate than rawhide.³¹ They also bought lightweight muskets, powder and bullets; metal kettles, axes, hoes, and knives; glass beads, silver single-shell necklaces, combs, mirrors, pipes, and buttons; tiny bells for leggings; rum, and brandy.³² French historian Antoine-Simon Le Page Du Pratz, who spent sixteen years in Louisiana, recounted, "the Natchez [were] attracted by the [ease] of trading for merchandise unfamiliar in their region, [including] guns, powder, lead, brandy, [and other] materials . . . [which] attracted them more and more to the French."³³

29. David S. Newhall, *Native Americans, Relations with the French*, MISS. ENCYCLOPEDIA (Feb. 2, 2018), <https://mississippiencyclopedia.org/entries/native-americans-relations-with-french/> [https://perma.cc/T7QL-WQU7].

30. *Id.*

31. *Id.*

32. *Id.*; Patricia D. Woods, *The French and the Natchez Indians in Louisiana: 1700-1731*, 19 LA. HIST.: J. LA. HIST. ASS'N 413, 426 (1978).

33. Woods, *supra* note 32, at 426 (quoting 1 ANTOINE SIMON LE PAGE DU PRATZ, HISTOIRE DE LA LOUISIANE 179 (1758)).

Under Indigenous economic systems, it was common to wait to fulfill a trade obligation until the promised item became available or the party was in a financial position to pay.³⁴ The French, on the other hand, expected immediate payment. In 1722, a French sergeant at Fort Rosalie garrison waiting on money from some Natchez men started a conflict over the debt that ended in their deaths.³⁵ The incident led to further disputes where six more Natchez men, a Black man, three French men, and several livestock died.³⁶

These losses did not end the tension between the Natchez and the French. In the winter of 1723, a Natchez elder's family was ravaged by illness.³⁷ Lacking enough hands to produce a good harvest, he could only grow enough corn to feed his family, forcing him to default on a promise of corn he made to a French soldier in exchange for goods he had already received.³⁸ The soldier beat him to death.³⁹ Although both Natchez and French citizens called for the soldier's punishment, his commanding officer only reprimanded him.⁴⁰ This sparked rage among the Natchez living in Apple Village, who raided the French settlement, burning down historian Antoine Du Pratz's home in the process.⁴¹ French governor Jean-Baptiste Le Moyne de Bienville petitioned the French Superior Council to wage war on the Natchez in response.⁴² But when Bienville arrived at Fort Rosalie, a council of officers convinced him to make a deal instead.⁴³ The Natchez agreed to the French terms, even though it required them to kill 12 of their men, including chiefs.⁴⁴

After resolving the conflict, the Natchez temporarily stopped trading with the French but resumed relations by 1725.⁴⁵ Historian Patricia Woods conjectures that the debts they then accrued allowed the French to pay much less than market price for the tobacco they forced the Natchez to grow.⁴⁶ The Spanish also extended credit to Indigenous nations that

34. DAVID GRAEBER, *DEBT: THE FIRST 5,000 YEARS* (2011).

35. Woods, *supra* note 32, at 426.

36. *Id.*

37. *Id.* at 428.

38. *Id.* at 427–28.

39. *Id.* at 428.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 428–29.

46. The Natchez had previously grown tobacco only for consumption, which did not require curing or special preparations. *Id.* at 429–31. Woods asserts, “Although definite evidence is lacking, it would seem that in light of the most recent dealings with the French, the Natchez could have been in debt for past exchanges.” *Id.* at 431.

indebted them to their colonizers. By 1800, the Choctaws owed Spanish settlers \$48,000, the equivalent of \$1,224,628.57 in 2025.⁴⁷

A. Missionization

On the other side of the country, Spanish missionaries similarly established a debtor/creditor relationship with the Indigenous people living in California. Crusading Spanish priests, called friars, established twenty-one missions in what was then the Spanish colony Alta California between 1769 and 1833. Their goal was to convert the Indigenous population to Catholicism and compel their “civilization” through European lifestyles.⁴⁸ The friars forced Indigenous people, often children, to perform the hard labor of constructing and maintaining the missions that isolated them from the general population. Converts had to leave their homes to live within mission walls or in nearby communities called *rancherías*, which the priests also controlled. Friars claimed that their training in brickmaking and construction, cattle and horse raising, blacksmithing, and tanning hides was a path to independent living. But freedom eluded the converts until the system collapsed in 1834. At that point, half of California’s Indigenous population had died from epidemics and other health issues,⁴⁹ with the highest mortality rates among infants and children.⁵⁰

In a section of *Bad Indians: A Tribal Memoir* titled *Padre*, author and English professor Deborah Miranda laments the broken promises that the friars made to her ancestors.

At the giving end of a whip, he taught us to care for and kill cattle, work fields of wheat and corn and barley, make adobe walls for our prisons, build the church, the *monjerio*, storerooms—promised it all to us if we would just grow up, pray hard enough, forget enough.⁵¹

When the brutal conditions in missions killed their Indigenous captives, missionaries went out hunting for new members to replace them. By

47. VALERIE LAMBERT, CHOCTAW NATION: A STORY OF AMERICAN INDIAN RESURGENCE, UNIVERSITY OF NEBRASKA PRESS 35 (2007) (citing RICHARD WHITE, THE ROOTS OF DEPENDENCY: SUBSISTENCE, ENVIRONMENT, AND SOCIAL CHANGE AMONG THE CHOCTAWS, PAWNEES, AND NAVAJOS (1983); Cameron B. Wesson, *European Contact and Trade*, in CHOCTAW LANGUAGE AND CULTURE 272–75 (Henry Willis & Marcia Haag, 2001); Aloysius Plaisance, *The Choctaw Trading House, 1803–1822*, 16 ALA. HIST. Q. 393–423 (1954)).

48. *The Missions, Early California History: An Overview*, in CALIFORNIA AS I SAW IT: FIRST-PERSON NARRATIVES OF CALIFORNIA’S EARLY YEARS, 1849–1900 (Library of Congress), <https://www.loc.gov/collections/california-first-person-narratives/articles-and-essays/early-california-history/missions/> [<https://perma.cc/ZNE3-7E3M>].

49. *Id.*

50. *Id.*

51. DEBORAH MIRANDA, *BAD INDIANS: A TRIBAL MEMOIR* 19–20 (2013).

the end of this period, 80% of the Indigenous people living in missions had died.⁵²

‘Mission Indians’ received no payment for their work. The fruit of their labor

all went to Spain, to Rome, to Mexico, into the pockets of merchants, smugglers, priests, dishonest administrators and finally the cruel Americans. Nothing left for the children the padre had worked so hard to civilize, poor savages pulled from the fires of certain hell. He was our shepherd, we were his beloved and abused flock, now the fields are eaten down to the earth, we claw the earth yet even the roots are withered, and the shepherd has gone away.⁵³

Finally freed, the survivors had no homes to return to because white people had taken their land.⁵⁴ Many found themselves in servitude again, unable to earn money to buy back their stolen property. “But we are pagans no more! Now we are Christian vaqueros, Christian housekeepers, Christian blacksmiths and shoemakers and laundry women and wet nurses and handymen – none of us paid with more than a meal or a shirt or a pair of discarded boots, but Christians. Poor Christians, drunken Christians, meek targets for forty-niners crazed by gold lust or ranchers hungry for land. We are homeless Christians, diseased and landless Christians, we are Christian slaves bought and sold in newspapers, on auction blocks in San Francisco, Los Angeles, one hundred dollars for a likely girl, fifty dollars for an able-bodied boy, free to whoever bails the old men out of jail: every one of us baptized by the padre, our primitive souls snatched from this hell our bodies cannot escape, we are Christian, we are Catholic, we are saved by the padres and for that, Jesus Christ, we must be grateful.”⁵⁵

When Mexico gained independence from Spain in 1821, it became the ruler of Alta California, although news of this regime change did not reach the territory until the following year.⁵⁶ The Mexicans who took over California put Indigenous people to work on their ranches in exchange for room and board but no salary.⁵⁷ Federal law prohibited Indians from

52. *Id.* at 41–42.

53. *Id.* at 38.

54. *Id.* at 42.

55. *Id.* at 38–39.

56. *Mexican California, Early California History: An Overview*, in *CALIFORNIA AS I SAW IT: FIRST-PERSON NARRATIVES OF CALIFORNIA'S EARLY YEARS 1849–1900* (Library of Congress), <https://www.loc.gov/collections/california-first-person-narratives/articles-and-essays/early-california-history/mexican-california/> [https://perma.cc/4HEJ-8LDC].

57. *Id.*

voting, owning land, or taking a white person to court.⁵⁸ Until 1865, it was legal to enslave Indigenous people.⁵⁹ Pierson Reading, who managed the affairs of Swiss-Mexican-American colonizer John Sutter, praised this practice in 1844: “The Indians of C[alifornia] make as obedient and humble slaves as the negro in the South. For a mere trifle you can secure their services for life.”⁶⁰ Gold rush camps and most white households in California enslaved Indigenous people during this period. After losing their land, many Indigenous citizens also lost their freedom, becoming permanently indebted to their enslavers.

B. President Jefferson: Run Them Into Debt

Observing the dependence that the Choctaw and other nations developed on European goods, Thomas Jefferson devised a plan to use debt as a tool to acquire their land. In a letter to Congress dated January 18, 1803,⁶¹ President Jefferson asked for \$2,500 to establish government trading posts to “‘place within their (the Indians’) reach those things which will contribute more to [their] domestic comfort than the possession of extensive but uncultivated wilds,’ and to lay the foundation for the purchase of some of the regions which they controlled.”⁶² With strategically placed trading posts, Jefferson sought to entice Indigenous people into entering markets for things that they never needed or desired before. Once they did, they would quickly amass debt so large it would force them to sell land to pay it off.

Jefferson identified the Mississippi river as an ideal place to start trading with Indigenous nations who had previously done business with the English. “The country on that river is inhabited by numerous tribes, who furnish great supplies of furs and peltry to the trade of another nation, carried on in a high latitude, through an infinite number of portages and lakes, shut up by ice through a long season.”⁶³ Jefferson proposed that

[a]n intelligent officer, with ten or twelve chosen men, fit for the enterprise, and willing to undertake it, taken from our posts, where they

58. *Native American Voting Rights, Presidential Elections and Voting in U.S. History*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/elections/voters/native-americans/> [<https://perma.cc/BX9V-Y7WF>] (last visited Aug. 30, 2025).

59. ANDRÉS RESÉNDEZ, *THE OTHER SLAVERY: THE UNCOVERED STORY OF INDIAN ENSLAVEMENT IN AMERICA* 295 (First Mariner Books ed., 2017).

60. *See generally* COMM’N OF INDIAN AFFAIRS, *ANNUAL REPORT OF THE COMMISSION OF INDIAN AFFAIRS* (1852).

61. Letter from Thomas Jefferson to Congress (Jan. 18, 1803) (on file with the Library of Congress); *see* JOE E. WATKINS, *THE STORY OF THE CHOCTAW INDIANS: FROM THE PAST TO THE PRESENT* 29 (Greenwood 2019) (citing BERNARD SHEEHAN, *SEEDS OF EXTINCTION: JEFFERSONIAN PHILANTHROPY AND THE AMERICAN INDIAN* 171 (W.W. Norton 1974)).

62. HELEN FITZGERALD SANDERS, *A HISTORY OF MONTANA* 86 (1913).

63. Letter from Jefferson to Congress, *supra* note 61.

may be spared without inconvenience, might explore the whole line, even to the Western Ocean, have conferences with the natives on the subject of commercial intercourse, get admission among them for our traders, as others are admitted, agree on convenient deposits for an interchange of articles, and return with the information acquired, in the course of two summers. Their arms and accoutrements, some instruments of observation, and light and cheap presents for the Indians, would be all the apparatus they could carry, and with an expectation of a soldier's portion of land on their return, would constitute the whole expense.⁶⁴

Jefferson sought to mask his true purpose by framing this expedition as an attempt to forge economic partnerships and civilize Indigenous nations.⁶⁵ In a subsequent, confidential letter to William Henry Harrison dated February 27, 1803, Jefferson laid out his plan more clearly.⁶⁶ Jefferson explained why he could be more frank in this correspondence: “[T]his letter being unofficial, & private, I may with safety give you a more extensive view of our policy respecting the Indians, that you may the better comprehend the parts dealt out to you in detail through the official channel.”⁶⁷ First, Jefferson explained how U.S. soldiers’ massacre of buffalo would force Indigenous people to adapt lifestyles that would make them prioritize material goods over land.

“[T]he decrease of game rendering their subsistence by hunting insufficient, we wish to draw them to agriculture, to spinning & weaving. [T]he latter branches they take up with great readiness, because they fall to the women, who gain by quitting the labours of the field for those which are exercised within doors. [W]hen they withdraw themselves to the culture of a small piece of land, they will perceive [sic] how useless to them are their extensive forests, and will be willing to pare them off from time to time in exchange for necessities for their farms & families.”⁶⁸

But Jefferson was not confident enough in this theory to leave the process to chance. He had a plan:

“[T]o promote this disposition to exchange lands which they have to spare & we want, for necessities, which we have to spare & they

64. *Id.*

65. See WATKINS, *supra* note 61, at 31 (citing ARTHUR H. DEROSIER, JR., THE REMOVAL OF THE CHOCTAW INDIANS (1970); Theda Perdue, *Indians in Southern History*, in INDIANS IN AMERICAN HISTORY 137–157 (Frederick E. Hoxie ed., 1988)).

66. Letter from Thomas Jefferson to William Henry Harrison (Feb. 27, 1803), *Founders Online*, NAT’L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/01-39-02-0500> [https://perma.cc/Y4PF-GGPZ] (last visited Aug. 30, 2025).

67. *Id.*

68. *Id.*

want, we shall push our trading houses, and be glad to see the good & influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop th[em off] by a cession of lands.”⁶⁹

Expanding on his request to Congress to establish U.S. trading posts along the Mississippi river, he explained that government traders could eliminate competition from private traders by undercutting their prices.

“at our trading houses too we mean to sell so low as merely to repay us cost and charges so as neither to lessen or enlarge our capital. this is what private traders cannot do, for they must gain; they will consequently retire from the competition, & we shall thus get clear of this pest without giving offence or umbrage to the Indians.”⁷⁰

Indigenous buyers loyal to their regular traders might resent U.S. traders pushing them out. But if their disappearance seemed to be a simple consequence of market forces, there was no one to blame.

Jefferson argued that, through enforced debt, the United States would eventually gain all the land it desired. He saw Indigenous peoples’ fate as either assimilation or continued exile. “In this way our settlements will gradually circumscribe [sic] & approach the Indians, & they will in time either incorporate with us as citizens of the US. or remove beyond the Mississippi.”⁷¹ He preferred assimilation. “[T]he former is certainly the termination of their history most happy for themselves.”⁷² Jefferson acknowledged that emotion would be a key element to success.

[B]ut in the whole course of this, it is essential to cultivate their love. as to their fear, we presume that our strength & their weakness is now so visible that they must see we have only to shut our hand to crush them, & that all our liberalities to them proceed from motives of pure humanity only.⁷³

Jefferson was prepared to act violently if his strategy failed. “Should any tribe be fool-hardy enough to take up the hatchet at any time, the seizing the whole country of that tribe & driving them across the Missis[s]ip[p]i, as the only condition of peace, would be an example to others, and a furtherance of our final consolidation.”⁷⁴

In closing the letter, Jefferson reiterated how important it was to keep his strategy secret.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

“I must repeat that this letter is to be considered as private & friendly, & is not to controul [sic] any particular instructions which you may recieve [sic] through the official channel. you will also percieve [sic] how sacredly it must be kept within [your] own breast, and especially how improper to be understood by the Indians. [for] their interests & their tranquility it is best they should see only the present age of their history.”⁷⁵

Jefferson’s plan succeeded. Through bribery, intoxication, threats to stop paying earlier-negotiated annuities, and military attacks, government officials led Indigenous nations into debt.⁷⁶ They also exploited the fundamentally different conceptions of land held by Indigenous and U.S. cultures.⁷⁷ While Americans understood land to be owned, either privately or publicly, Indigenous people saw it as something shared among people and nature.⁷⁸

As Jefferson foresaw, Indigenous debt led to massive transfers of land from their nations to the United States. In the 1805 Treaty of the Chickasaw Nation, the government paid off \$20,000 (\$549,513 in 2025) in Chickasaw trading debts in return for 2.25 million acres of hunting land in present-day Kentucky, central Tennessee, and northern Alabama.⁷⁹ By 1822, the Choctaw owed American trading houses \$12,000 (\$329,707.69 in 2025).⁸⁰ The Potawatomi signed six land treaties over fourteen years, turning over land in Illinois, Michigan, Wisconsin, and Indiana⁸¹ for two

75. *Id.*

76. *Annuities for American Indians*, ANNUITY MUSEUM, <https://www.immediateannuities.com/annuitymuseum/annuitiesforamericanindians/> [<https://perma.cc/7JMZ-6HEN>] (last visited Aug. 30, 2025).

77. *Id.*

78. See *Native Perspectives: Land Ownership*, GRAND CANYON TR. (June 29, 2021), <https://www.grandcanyontrust.org/blog/native-perspectives-land-ownership/> [<https://perma.cc/HF3W-HLRA>]; Jessica A. Shoemaker, *Transforming Property: Reclaiming Indigenous Land Tenures*, 107 CAL. L. REV. 1531, 1542–43 (2019); Mukesh Eswaran, *The Wrongs of Property Rights: The Erosion of Indigenous Communal Land Rights and Its Welfare Consequences*, 49 CAN. PUB. POL’Y 267, 274–77 (2023).

79. Treaty with the Chickasaw, Chickasaw Nation-U.S., July 23, 1805, 7 Stat. 89; see also *First Chickasaw Land Cession-Treaty of the Chickasaw Nation*, CHICKASAW.TV, <https://www.chickasaw.tv/events/first-chickasaw-land-cession> [<https://perma.cc/CAK5-CF7F>] (last visited Aug. 31, 2025).

80. VALERIE LAMBERT, CHOCTAW NATION: A STORY OF AMERICAN INDIAN RESURGENCE, UNIVERSITY OF NEBRASKA PRESS 35 (2007) (citing RICHARD WHITE, THE ROOTS OF DEPENDENCY: SUBSISTENCE, ENVIRONMENT, AND SOCIAL CHANGE AMONG THE CHOCTAWS, PAWNEES, AND NAVAJOS (1983); Cameron B. Wesson, *European Contact and Trade*, in CHOCTAW LANGUAGE AND CULTURE 272–75 (Henry Willis & Marcia Haag, 2001); Aloysius Plaisance, *The Choctaw Trading House, 1803–1822*, 16 ALA. HIST. Q. 393–423 (1954)).

81. ANNUITY MUSEUM, *supra* note 76; Treaty with the Potawatomi, Potawatomi Nation-U.S., Oct. 2, 1819, 7 Stat. 185; Treaty with the Ottawa, etc., Aug. 29, 1821, 7 Stat. 218; Treaty with the Potawatomi, Potawatomi Nation-U.S., Oct. 16, 1826, 7 State. 295; Treaty with the Potawatomi,

cents (fifty cents in 2025) an acre or less.⁸² Indiana signed seven treaties in four years with First Nations in southern Indiana, Wisconsin, Missouri, and Illinois, exchanging land for monthly annuity payments.⁸³

C. Trader Nation

Annuities, monthly payments written into treaties, often went directly to the traders who extended credit to Indigenous customers to buy goods at inflated prices.⁸⁴ To stop the flow of annuity money to traders and redirect it to the government, the Bureau of Indian Affairs (BIA) began substituting cash annuities with goods that it purchased itself and then distributed to Indigenous leaders.⁸⁵ The military often oversaw this distribution because,⁸⁶ until 1849, the BIA operated under the War Department. After receiving complaints that Indigenous leaders were disproportionately allocating annuity goods to their family and friends, BIA agents took over, giving goods directly to individual community members.⁸⁷ The 1851 Treaty of Fort Laramie⁸⁸ and 1861 Treaty of Fort Wise⁸⁹ with the Cheyenne, Arapaho, and Ute nations listed items distributed as annuities as diverse as blankets, beads, butcher knives, bacon, and bullet molds.⁹⁰ Local BIA agents also spent some of the annuity money on things that they kept in their offices, including tools for blacksmithing, carpentry, farming, and making repairs.⁹¹

Potawatomi Nation-U.S., Sep. 19, 1827, 7 Stat. 305; Treaty with the Chippewa, etc., July 29, 1829, 7 Stat. 320; Treaty with the Potawatomi, Potawatomi Nation-U.S., Oct. 26, 1832, 7 Stat. 394.

82. ANNUITY MUSEUM, *supra* note 76.

83. *Id.*

84. Jonathon C. Horn, *Indian Annuities*, COLO. ENCYCLOPEDIA, <https://coloradoencyclopedia.org/article/indian-annuities> [<https://perma.cc/N5CG-NXDU>] (last visited Aug. 30, 2025); *see also* STEPHEN J. ROCKWELL, *INDIAN AFFAIRS AND THE ADMINISTRATIVE STATE IN THE NINETEENTH CENTURY* 179 (2010).

85. ROCKWELL, *supra* note 84, at 248 n.5 (citing Donald R. McCoy, *The Special Indian Agency in Alaska, 1873–1874: Its Origins and Operation*, 25 PAC. HIST. REV. 355, 360 (1956)).

86. Horn, *supra* note 84; Eric M. White, *Interior vs. War: The Development of the Bureau of Indian Affairs and The Transfer Debates, 1849–1880*, 20 (May 2012) (Masters Theses James Madison University) (for download at <https://commons.lib.jmu.edu/master201019/366>) (citing Letter from John C. Calhoun to Thomas L. McKenney (March 11, 1824) in DOCUMENTS OF UNITED STATES INDIAN POLICY 37–38 (Francis Paul Prucha, ed., 1975)); *see also* U.S. Department of the Interior: Indian Affairs, *What is the BIA's History?*, <https://www.bia.gov/faqs/what-bias-history> [<https://perma.cc/U44R-8MXQ>].

87. Horn, *supra* note 84.

88. Treaty of Fort Laramie with Sioux, etc., Sep. 17, 1851, 11 Stat. 749, https://indian-law.mt.gov/_docs/fortpeck/treaties/laramie-treaty-1851.pdf [<https://perma.cc/RS3S-ZVMS>].

89. Treaty with the Arapaho and the Cheyenne, Feb. 18, 1861, 12 Stat. 1163.

90. Horn, *supra* note 84; Loretta Fowler, *Arapaho and Cheyenne Perspectives: From the 1851 Treaty to the Sand Creek Massacre*, 39 AM. INDIAN Q. 364, 366 (2015), at 366.

91. Horn, *supra* note 84.

Giving BIA agents the authority to handle annuity money themselves opened the door to corruption, embezzlement, and fraud.⁹² When the BIA paid traders directly, they did not always verify that their accounting was accurate.⁹³ Traders infamously fabricated or exaggerated debt without challenge or recourse. Historian Stephen J. Rockwell claims that “[s]o much influence did traders have over the Indians that in many cases the government would have been unable to procure the treaties of cession it wanted without providing adequately for the traders’ interests.”⁹⁴

Traders’ power on reservations persisted throughout the twentieth century, even as the dominance of mercantile capitalism, the buying and selling of goods along trade routes, declined. Trading posts were the only source of credit for reservation residents.⁹⁵ The posts also provided a market for Indigenous products and sold commodities that their customers could not buy anywhere else. They profited from marketing useless, unfamiliar products to Indigenous consumers.⁹⁶ Traders’ unique position as mediators between reservations and other capital markets increased their power.⁹⁷ By marrying Indigenous women, traders also inserted themselves into reservation governance and politics.⁹⁸ Embedded in local communities, they appealed to Indigenous clientele by using barter, pawn, and tokens; keeping an abundance of stock on the shelves; and cultivating good will.⁹⁹

Traders exploited their customers’ need for credit in between harvests, charging interest rates as high as 120%.¹⁰⁰ Navajo trading posts ran popular pawn racks where Navajo exchanged silver-work for credit.¹⁰¹ If they could not buy their silver-work back in time, the trading post sold it.¹⁰² Instead of paying out cash, trading posts issued tokens, or scrip, that

92. *See id.*; ROCKWELL, *supra* note 84, at 200.

93. *Id.* The agency turned over \$10,000 in the 1828 Potawatomi treaty, \$11,601 at the 1829 Winnebago treaty, over \$200,000 in 1832 treaties with northern tribes in 1832, \$175,00 at the 1833 Potawatomi treaty, \$300,000 at the 1836 Ottawa treaty, more than \$400,000 in 1837 treaties with the Chippewa, Sioux, Sac and Fox, and Winnebago, \$400,000 in 1838 and 1840 treaties with the Miami, and close to \$400,000 in 1842 treaties with the Wyandot, Chippewa, and Sac and Fox.

94. *See* ROCKWELL, *supra* note 84, at 203; FRANCIS PAUL PRUCHA, *THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS* 93 (1984).

95. *See generally* ROCKWELL, *supra* note 84.

96. Robert “Skip” Volk, “Red Sales In The Sunset”: *The Rise and Fall of White Trader Dominance in the United States’ Navajo Reservation and South Africa’s Transkei*, 24 AM. INDIAN CULTURE & RSCH. J. 69, 71–74 (2000), <http://dx.doi.org/10.17953>.

97. *Id.* at 71.

98. ROXANNE DUNBAR-ORTIZ, *AN INDIGENOUS PEOPLES’ HISTORY OF THE UNITED STATES* 143–44 (2014).

99. Volk, *supra* note 96, at 74.

100. *Id.*

101. *Id.*

102. *Id.*

was only redeemable at their location, so they profited twice from their pawn operations and lending. They also acted as debt collectors; as the reservation post office, they had access to residents' addresses.¹⁰³ When trading posts lost prominence in the late twentieth century, fringe lending stepped in to offer exploitative credit terms to Indigenous people living in financial deserts.

D. Financial Deserts

While running a credit report during an exercise in a home-buying class in 2025, Tescha Hawley, a citizen of the Gros Ventre Tribe who lives on the Fort Belknap Indian Reservation in Montana, discovered that debt collectors were after her for a medical bill she wasn't even supposed to pay.¹⁰⁴ Hawley's reservation has an Indian Health Service (IHS) hospital where the federal government funds medical care as part of a treaty agreement.¹⁰⁵ When Hawley was ready to give birth, the IHS was short staffed.¹⁰⁶ It sent her to a private hospital an hour away, promising to cover her bill in compliance with the law governing reservation health services.¹⁰⁷ No one ever alerted Hawley that her hospital bill was unpaid.

Instead of buying her dream home, she had to devote the next few years to correcting the government's mistakes and re-establishing her damaged credit.¹⁰⁸ Hawley's story is all too common. People in Indigenous communities are significantly more likely to have medical debt in collections compared to the national average.¹⁰⁹ The amount of that debt is higher.¹¹⁰ They commonly experience problems with billing, reimbursement, and credit reporting due to mistakes made by IHS, financial intervenors, hospitals, and clinics.¹¹¹ The frequency of these errors scares people away from getting medical care when they need it. This exacerbates the health crises in Indigenous populations stemming from poverty, racism, and isolation.¹¹² Two laws that would help solve this problem, the

103. *Id.* at 77.

104. Houghton & Zionts, *supra* note 10.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. CONSUMER FIN. PROT. BUREAU, MEDICAL COLLECTIONS ON CREDIT REPORTS IN NATIVE AMERICAN COMMUNITIES 9–12 (2024), https://files.consumerfinance.gov/f/documents/cfpb_aian-medical-debt_2024-12.pdf [<https://perma.cc/5A5G-QQ24>].

110. *Id.* at 11.

111. Houghton & Zionts, *supra* note 10.

112. *See generally* Teshia G. Arambula Solomon, Rachel Rose Bobelu Starks, Agnes Attakai, Fatima Molina, Felina Cordova-Marks, Michelle Kahn-John, Chester L. Antone, Miguel Flores Jr. & Francisco Garcia, *The Generational Impact Of Racism On Health: Voices From American Indian Communities*, 41 HEALTH AFFAIRS 281 (2022); Gopal K. Singh, PhD, MS, MSc, DPS, Hyunjung Lee, PhD, MS, MPP, MBA, Lyoungh Hee Kim, PhD, MPA, MA, Shanita D. Williams, PhD, MPH, APRN,

Protecting Native Americans' Credit Act¹¹³ and the Purchase and Referred Care Improvement Act,¹¹⁴ are stalled in committees and unlikely to pass under the Trump administration.

Native-owned businesses face greater challenges getting access to credit than non-Native businesses.¹¹⁵ Before the Covid-19 pandemic, Indigenous people struggled to make financial ends meet 1.41 times more than other U.S. populations.¹¹⁶ When the pandemic hit, in addition to suffering from high levels of infections and deaths,¹¹⁷ people living in majority-Native communities had high rates and amounts of delinquent debt.¹¹⁸ Nearly half of them were in subprime credit markets (46.4%), a percentage that is more than 2.5 times higher than for people living in non-Native communities.¹¹⁹ Others resorted to predatory lenders for financial survival.¹²⁰ In 2025, people living on reservations are four times as far away from ATMs and other basic banking services than people living off reservations.¹²¹ Twelve percent of the Indigenous population does not use checking services at banks or credit unions, relying instead on high cost

Social Determinants of Health Among American Indians and Alaska Natives and Tribal Communities: Comparison with Other Major Racial and Ethnic Groups in the United States, 1990–2022, 13 INT'L J. MATERNAL & CHILD HEALTH & AIDS (2024); *American Indian Health Disparities*, NATIONAL INDIAN COUNCIL ON AGING, INC., <https://www.nicoa.org/elder-resources/health-disparities/> [https://perma.cc/426C-VCPR] (last visited Aug. 30, 2025).

113. H.R. 7515, 118th Cong. (2024), <https://www.congress.gov/bill/118th-congress/house-bill/7515/text>.

114. H.R. 7516, 118th Cong. (2024), <https://www.congress.gov/bill/118th-congress/house-bill/7516>.

115. Ava LaPlante & Lauren Wheeler, *Native Entrepreneurs Face Credit-Access Challenges*, FED. RES. BANK OF MINNEAPOLIS (Feb. 21, 2024), <https://www.minneapolisfed.org/article/2024/native-entrepreneurs-face-credit-access-challenges> [https://perma.cc/MK6E-Z3VE].

116. Judy T. Lin, Christopher Bumcrot, Tippy Ulicny, Gary Mottola, Olivia Valdes, Robert Ganem, Christine Kieffer, Gerri Walsh & Annamaria Lusardi, *The State of U.S. Financial Capability: The 2018 National Financial Capability Study*, FINRA Inv. Educ. Found. (2019), <https://finrafoundation.org/sites/finrafoundation/files/NFCS-2018-Report-Natl-Findings.pdf> [https://perma.cc/QZR7-HRL8].

117. Riis L. Williams, *Native American Deaths from COVID-19 Highest Among Racial Groups*, PRINCETON SCHOOL OF PUBLIC AND INTERNATIONAL AFFAIRS, (Dec. 2, 2021), <https://spia.princeton.edu/news/native-american-deaths-covid-19-highest-among-racial-groups> [https://perma.cc/DD2H-YNJ7].

118. Kassandra Martinchek & Alexander Carther, *Native Communities Face Sustained Challenges to Building Financial Resilience*, URBAN WIRE (Feb. 21, 2021), <https://www.urban.org/urban-wire/native-communities-face-sustained-challenges-building-financial-resilience> [https://perma.cc/3BHP-62DL].

119. *Id.*

120. *Id.*

121. Miriam Jorgensen & Randall K.Q. Akee, *Access to Capital and Credit in Native Communities: A Data Review* (Native Nations Inst. 2017), https://nnigovernance.arizona.edu/sites/default/files/2022-09/Accessing_Capital_and_Credit_in_Native_Communities__A_Data_Review.pdf [https://perma.cc/PS4V-7PYU].

alternatives like payday lenders and pawn shops.¹²² The debt that accumulates with these types of loans makes it harder to access low cost lenders later.

Unique restrictions that the federal government imposes on tribally held land costs members between \$973 and \$4,765 per acre in lost wealth.¹²³ The 1887 Dawes General Allotment Act required equal division of Indigenous land interests among heirs after an owner died.¹²⁴ Instead of allowing the deceased's family members to decide how to apportion or sell their inheritance, the law automatically split the ownership into smaller and smaller shares amongst heirs.¹²⁵ After a few generations, a single 160-acre allotment might have hundreds of owners. Under this regime, one owner wanting to develop the land would need permission from a majority (or sometimes all) of their co-owners.¹²⁶ The cost of acquiring consent could exceed the land's value.¹²⁷ In this way, land fractionation depreciated Indigenous property values over time.

The Bureau of Indian Affairs (BIA) holds tribal land in trust instead of giving it outright to tribes and individuals, who own only an interest in it.¹²⁸ This limits their ability to mortgage, sell, or develop the land without federal approval, which slows or blocks homebuilding and business ventures.¹²⁹ This system, purportedly designed to protect Indigenous people from predatory buyers, denies them the full value of their land by removing it from regular real estate markets.

122. FEDERAL DEPOSIT INSURANCE CORPORATION, FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS (2024), <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report> [https://perma.cc/RN7V-ZLSH]; KYLE SMITH, PREDATORY LENDING IN NATIVE AMERICAN COMMUNITIES, FIRST NATIONS DEVELOPMENT INSTITUTE (2003), https://www.firstnations.org/wp-content/uploads/publication-attachments/2003_Predatory_Lending_Report.pdf [https://perma.cc/43WS-ZFEF].

123. Christian Dippel, Dustin Frye & Bryan Leonard, *Property Rights Without Transfer Rights: A Study of Indian Land Allotment*, NBER Working Paper No. 27479, July 2020, revised Mar. 2025, <https://www.nber.org/papers/w27479.pdf>; see also Christian Dippel, Dustin Frye & Bryan Leonard, *Property Rights Without Transfer Rights: A Study of Indian Land Allotment*, Research Briefs in Economic Policy No. 245 (Jan. 2021), <https://www.cato.org/sites/cato.org/files/2021-01/RB-245.pdf>.

124. Rebekah May Yeagley, *Why Native American Reservations Are the Most Poverty-Stricken Lands in America*, FOUND. FOR ECON. EDUC. (Nov. 9, 2020), <https://fee.org/articles/why-native-american-reservations-are-the-most-poverty-stricken-lands-in-america/> [https://perma.cc/K9MB-LQK6].

125. *Id.*

126. *Id.*

127. *Id.*

128. Evelyn Iritani, *Ownership Structure of Tribal Land Exacts a Multibillion-Dollar Penalty*, UCLA ANDERSON REV. (Aug. 26, 2020), <https://anderson-review.ucla.edu/native-american-land> [https://perma.cc/DC4M-KRPX].

129. *Id.*

More than half of adults in Indigenous communities have debt in collections—a higher rate than for any other community.¹³⁰ The debt plaguing Indigenous people today and their difficulty accessing fair credit stem from Jefferson’s plan to run them into debt over two hundred years ago. The laws and policies that perpetuate these inequalities are unconstitutional.

II. DEBT DURING ENSLAVEMENT

“...a slave, being property, can hold no property.”

—HARRIET JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL¹³¹

While using debt as a tool in the ongoing project of depriving Indigenous people of their land, U.S. laws and policy have simultaneously wielded credit as a weapon against Black people. When settlers purchased and enslaved kidnapped Africans, they treated them as debtors whose sole purpose was to work in exchange for bare subsistence.¹³² Convict leasing, a system where prisons rented out incarcerated men to steel mills, mines, lumber and brick yards, and other companies, compelled prisoners to work off their debts to society in grueling, often deadly labor.¹³³ White men referred many of these men to the authorities, falsely accusing them of crimes or unpaid debts. They sought to re-enslave Black people to boost the failing Southern economy.¹³⁴ White landowners also forced Black people to work off fabricated debts on their plantations.¹³⁵

Although legally abolished in 1867, debt peonage continues today through laws that penalize failure to pay legal financial obligations, including traffic tickets, with imprisonment.¹³⁶ Legal scholar and activist

130. Kassandra Martinchek & Alexander Carther, *Native Communities Face Sustained Challenges to Building Financial Resilience*, URB. INST. (Feb. 21, 2021), <https://www.urban.org/urban-wire/native-communities-face-sustained-challenges-building-financial-resilience> [<https://perma.cc/2LWV-C9XH>].

131. HARRIET JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL [BY] LINDA BRENT 4 (L. Maria Child ed., 1973) (1861).

132. *The Transatlantic Slave Trade*, EQUAL JUSTICE INITIATIVE, <https://eji.org/report/transatlantic-slave-trade/origins/> [<https://perma.cc/BQ5B-3DE9>] (last visited Oct. 15, 2025).

133. Lynn Weinstein, *The Convict Leasing System: Slavery in its Worst Aspects*, Library of Congress Blogs (June 17, 2021), https://blogs.loc.gov/inside_adams/2021/06/convict-leasing-system/ [<https://perma.cc/FS9Z-5PCP>]; see also DAVID M. OSHINSKY, WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 17 (1996); ANDREA FREEMAN, RUIN THEIR CROPS ON THE GROUND: THE POLITICS OF FOOD IN THE UNITED STATES, FROM THE TRAIL OF TEARS TO SCHOOL LUNCH 51 (2024).

134. FREEMAN, *supra* note 133, at 51.

135. Weinstein, *supra* note 133; Christopher Muller, *Freedom and Convict Leasing in the Post-bellum South*, 124 AMERICAN J. SOCIOLOGY 367, 372 (2018).

136. Olivia C. Jerjian, *The Debtors' Prison Scheme: Yet Another Bar in the Birdcage of Mass Incarceration of Communities of Color*, 41 N.Y.U. REV. L. & SOC. CHANGE 235, 235 (2017).

Michelle Alexander outlines how mass incarceration became the “new Jim Crow.”¹³⁷ Outside the criminal justice system, debt shaped the lives of freed people who became sharecroppers. It limited entrepreneurial opportunities for Black businesspeople. Parallel retail credit systems for white and Black shoppers have existed since Emancipation. Credit segregation persists today with discriminatory credit cards, credit scoring, and car loans.

A. Enslaved People’s Market Participation

U.S. law generally prohibited enslaved people from owning property or conducting trade so that they would not be able to buy their freedom and disrupt the South’s economic system. In a 2007 article titled *The Shadow of Credit: The Historical Origins of Facial Predatory Lending and Its Impact on African American Wealth Accumulation*, attorney Charles Lewis Nier III documents these laws and explores the limitations placed on Black people’s access to credit in the United States throughout its history.¹³⁸ A 1692 Virginia law commanded that “all horses, cattle and hoggs marked of any negro or other slaves marke, or by any slave kept” and not “converted by the owner of such slave to the use and marke of the

Though officially deemed unconstitutional, the debtors’ prison scheme consists of jailing low-income individuals for not being able to pay their legal financial obligations (“LFOs”), also known as criminal justice debt. These LFOs include fines, fees, and assessments—from traffic tickets to public defender fees. Two lawsuits, *Cleveland, et al. v. City of Montgomery* and *Mitchell, et al. v. City of Montgomery*, resulted in settlement agreements promising—among many other things—that anyone below 125% of the Federal Poverty Level would be considered indigent and, thus, would not be jailed for being unable to pay off their LFOs. The highly publicized Department of Justice’s 2014 report of its investigation of the Ferguson Police Department brought further attention to the debtors’ prison lawsuits, unleashing an onslaught of additional complaints exposing debtors’ prison schemes. Though many of the lawsuits filed did not explicitly mention race, most of them were filed in jurisdictions with large communities of color.

Id.

137. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); see also Timothy Black & Lacey Caporale, *The New Debt Peonage in the Era of Mass Incarceration*, 4 CULTURAL ENCOUNTERS, CONFLICTS & RESOLUTIONS, no. 1, art. 4 (2020), <https://engagedscholarship.csuohio.edu/cecr/vol4/iss1/4/> [<https://perma.cc/K6M6-B8DE>] (arguing that mass incarceration has institutionalized a new form of debt peonage that governs racialized poverty, reconstitutes mechanisms of social control, and circumscribes freedom). The paper examines the mechanism of the “new debt peonage” and its consequences in the lives of 30 men, mostly African American, released from an alternative incarceration facility in Cleveland, Ohio. Their debt included court fines and fees, restitution costs, motor vehicle fines and reinstatement fees, parole and probation supervision fees, child support debt, education, and medical debt. Median debt at their time of community reentry was \$9,700. This debt affected their strategies for community reentry and impeded community reintegration, imposing a new form of labor subordination and social control. See *id.* See also Nino Monea, *A Constitutional History of Debtors’ Prisons*, 14 DREXEL L. REV. 1 (2022).

138. Charles Lewis Nier III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact Upon African American Wealth Accumulation*, 11 U. PA. J.L. & SOC. CHANGE 131 (2007).

said ‘owner’ would be forfeited to the use of the parish poor.”¹³⁹ A 1705 Virginia law criminalized buying, selling, or receiving “any coin or commodity” from an enslaved person without their enslaver’s permission.¹⁴⁰ The penalty for violating the law was thirty-nine lashes or a fine of four times the value of the item for the first incident with increases up to a six-month jail sentence for further violations.¹⁴¹

An 1826 Georgia law restricted Black people from buying or selling “any quantity or amount whatever of cotton, tobacco, wheat, rye, oats, corn, rice or poultry or any other articles, except such as are known to be usually manufactured or vended by slaves.”¹⁴² An 1846 Texas law prohibited Black people from “pretended ownership over property,” including horses, sheep, cattle, goats, hogs, or any other animals.¹⁴³ Tennessee outlawed enslaved people “from owning a pig, cow, mule, horse, or ‘other such like description of property’”¹⁴⁴ and even [p]roperty held by the slave with the owner’s consent was liable to forfeiture.”¹⁴⁵

Despite these rigid rules, legal loopholes allowed some enslaved people to earn and save money by selling goods or services. In some upper Southern cities, enslaved people with special skills hired themselves out under agreements with their enslavers to pay them a set amount and keep any earnings above that for themselves.¹⁴⁶ Abolitionist and leader Frederick Douglass recounted in his autobiography,

I was to be allowed all my time; to make all bargains for work; to find my own employment, and to collect my own wages; and, in return for this liberty, I was required, or obliged, to pay him [enslaver Hugh Alud] three dollars at the end of each week, and to board and clothe myself, and buy my own calking tools. A failure in any of these particulars would put an end to my privilege. This was a hard bargain.¹⁴⁷

139. *Id.* at 135–36 (quoting 3 William Waller Hening, *The Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature, in the year 1619*, at 103 (1823), <https://babel.hathitrust.org/cgi/pt?id=hvd.hw2scr&seq=95>).

140. *Id.* at 137 (citing 3 WILLIAM WAILER HENING, *THE STATUTES AT LARGE: BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE IN THE 1619*, at 451–52 (1819–23)).

141. *Id.* (citing LOREN SCHWENINGER, *BLACK PROPERTY OWNERS IN THE SOUTH 1790–1915*, at 52 (1990)).

142. *Id.*

143. *Id.* at 138.

144. *Id.* at 136.

145. *Id.* at 136 (quoting A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD* 173 (1978)).

146. *Id.* at 136–137 (citing Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Antebellum South* 71–72 (1967)).

147. FREDERICK DOUGLASS, *MY BONDAGE AND MY FREEDOM* 328 (1968) (1855).

Douglass' ability to make money likely aided his eventual escape from enslavement. Abolitionist and writer Harriet Jacobs also describes an arrangement between her father and his enslaver requiring her father to pay \$200 (\$7,746 in 2025) a year to run a carpentry business and keep the rest of the proceeds for himself.¹⁴⁸

Enslavers operated under either the gang or the task system. In the gang system, a driver or overseer took charge of enslaved workers' daily activities, usually demanding hard labor from sunrise to sunset. The task system offered more flexibility, requiring enslaved workers to complete a set number of tasks per day. This afforded them opportunities to make or sell goods or perform work for other people in the time they had left each day.¹⁴⁹ Formerly enslaved people who worked under the task system in Liberty County, Georgia, owned horses, livestock, food, buggies, and wagons at Emancipation.¹⁵⁰ One of them owned property totaling \$2,290 (\$73,060 in 2025).¹⁵¹

Although people laboring under the gang system lacked the time to work elsewhere, many cultivated gardens or raised livestock and sold their harvests or animals.¹⁵² W.E.B. Du Bois believed that this practice led to the call for land ownership after Emancipation as a path to economic independence.¹⁵³ But enslavers saw these small concessions to independence as beneficial to themselves. *Waddill v. Martin*, an 1845 North Carolina lawsuit,¹⁵⁴ reveals their reasoning. Charlotte Martin brought the suit against her deceased husband James H. Martin's other executor, his son-in-law Thomas Waddill, disputing Thomas' payment of part of James' estate to enslaved workers who had grown and sold cotton with James' permission.

The court described the limitations that James put on his enslaved workers' participation in markets.

[James H. Martin], who was a considerable slaveholder, had been for many years in the habit of allowing his negroes to make small crops of cotton and other things, in patches of their own and for their own use. He did not, however, permit them to sell the cotton themselves, but required them, as they picked it out, to bring it to his gin; and

148. JACOBS, *supra* note 131.

149. Nier, *supra* note 138, at 138 (citing Phillip D. Morgan, *The Ownership of Property by Slaves in the Mid Nineteenth-Century Low Country*, 49 J. S. HIST. 399 (1983)); see also Ray Crook, *Gullah and the Task System*, ANTHROPOLOGY WORK REV., June 2002, at 24–28, <https://anthrosource.onlinelibrary.wiley.com/doi/10.1525/awr.2001.22.2.24>.

150. Nier, *supra* note 138, at 138.

151. *Id.*

152. *Id.*

153. W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA 1860-1880*, 123 (1935).

154. *Waddill v. Martin*, 38 N.C. 562 (3 Ired. Eq. 562) (1845).

[James] had it ginned and carried to market and sold with his own, and then, after deducting a due proportion of the expenses, [James] paid to the negroes the cotton made by them, to enable them to purchase small articles of comfort for themselves and their families.¹⁵⁵

James died before cotton went to market that year.

In the year 1836, [James'] slaves had, by his permission, planted and cultivated their patches of cotton on his land: in autumn, they gathered it and delivered it to [Thomas Waddill] at the gin, to be prepared and sold for them by him, when he should sell that belonging to the estate.¹⁵⁶

Thomas gave \$143 (\$6,049 in 2025) to the enslaved workers who had grown the cotton then paid himself back out of James' estate.¹⁵⁷ Charlotte objected to Thomas' withdrawal from the estate on the grounds that any money made by his enslaved workers belonged only to James because they could not lawfully own property.¹⁵⁸

The court sided with Thomas, calling the practice of allowing enslaved workers to grow and sell cotton and food "a most beneficial usage, which is almost universal throughout North Carolina."¹⁵⁹ It labeled Charlotte's claim one of first impression, stating that "we have never known or heard of an attempt hitherto, to charge an executor in favor of a legatee or even creditor, with the little crops of cotton, corn, potatoes, ground peas and the like, made by slaves by permission of their deceased owners."¹⁶⁰ It went on,

it has never been considered that the negro's little crops, growing or made, were assets, any more than the little sums of money which they might have received for the crop of the preceding year, if any remnant were left in their chests, or their poultry, or their dog, or their extra clothing.¹⁶¹

The court compared the enslaved workers' position to that of a wife's, neither having the legal capacity to own property or to participate in markets independently.

Those petty gains and properties have been allowed to our servants by usage, and may be justified by policy and law, upon the same principle, that the savings of a wife in housekeeping, by sales of milk,

155. *Id.* at 563.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 563–64.

160. *Id.* at 564.

161. *Id.*

butter, cheese, vegetables and so forth, are declared to be, by the husband's consent, the property of the wife. It is true a slave cannot have property; and upon that the argument for the exception is built. But it is equally true that a married woman can have no property in money or personal chattels in possession; but they belong in strict law to the husband, and actions in respect to them must be in the husband's name. Nevertheless, the wife may claim them against the executor.¹⁶²

The crucial distinction between an enslaved worker and a wife, who the court implicitly assumed to be white, was their ability to seek redress in court.

Although the court found in favor of the enslaved workers, it did so based on fairness principles, not on any rights belonging to those workers. "Now we do not say, that negroes can hold any thing against the executor, because they and what they have belong, as property, to the executor."¹⁶³ It explained that enslavers did not enter into these agreements for the sake of their enslaved workers but for their own sake.

But we do say, that an executor is not bound to strip a poor negro of the things his master gave him, nor to take away his petty profits from a patch, with the proceeds of which the slave, with the ordinary precaution of a prudent and humane master, may be induced, and in a measure compelled, to buy those needful comforts of food and raiment, over and above the allowances of the owner, which promote his health, cheerfulness and contentment, and enhance his value.¹⁶⁴

The court assumed that the money made through cotton sales would only be enough to buy small amounts of clothes, food, and other goods that would make enslaved people less likely to rebel or attempt escape. The practice also spared their enslavers from having to provide some necessities, saving him some expenses while encouraging loyalty.

In many instances, what the slave, with a pride that makes him happy, buys for himself, would, if not thus procured, be of necessity supplied directly by the master; so that, in point of fact, leaving to the negro the spending of his money at his own pleasure, is then a pecuniary saving to the estate; and these slight indulgencies are repaid by the attachment of the slave to the master and his family, by exerting his industry and honesty, and a spirit to make and save for the master as well as for himself.¹⁶⁵

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 564–65.

The court did not expect enslaved workers to make enough money to buy their freedom, only to induce their complacency. “[E]xperience has proved so fully the advantages of these minor benefactions to a dependent race, which humanity at first prompted, that there is scarcely an owner of slaves, who does not act as [James] did, and no executor we believe, ever acted otherwise in such a case, than [Thomas] did.”¹⁶⁶

The court further justified its decision by explaining that the law upheld the right of enslaved workers to own some property independently.

[T]here are a number of statutes, which in regulating trading with slaves, recognize a sort of ownership by slaves of certain articles, by permission of the master, forbidding them to have certain other articles or to sell or buy them; which shews, that there is an universal sense pervading the whole community, of the utility, nay, unavoidable necessity, of leaving to the slave some small perquisites, which may be called his and disposed of by him as his, although as against a wrong doer the property must be laid in the master, for the sake of the remedy, and although the master, if he will, may take all.¹⁶⁷

The case demonstrates that the lines between being and owning property were often blurred. Although cast as perpetual debtors, enslaved people could also be creditors, but only in practice. They had no legal right to collect debts owed to them. The court could uphold James’ enslaved workers’ right to the money they earned in the face of Charlotte’s challenge but, if Thomas had failed to pay them, they could not have brought a suit for payment in their own names. The court was careful to clarify that, ultimately, it decided for James, not the enslaved workers. The debt it acknowledged arose out of a system that ultimately benefited James far more than it cost him. Although the amount of his estate decreased by \$143, the court believed that it was larger than it would have been if James had not allowed the people he enslaved to grow and sell cotton.

B. Home Ownership

Although enslaved people rarely accumulated significant wealth, some free Black people were able to purchase homes and land before Emancipation, particularly in Northern cities.¹⁶⁸ Their property holdings

166. *Id.* at 565.

167. *Id.*

168. Nier, *supra* note 138, at 141 (citing GARY B. NASH, *FORGING FREEDOM: THE FORMATION OF PHILADELPHIA’S BLACK COMMUNITY* 248 (1988)).

In Philadelphia, a house-to-house survey conducted by the Abolition Society in 1837 determined that, of the 3,652 African American households listed, 282 owned real estate with a total value of \$322,532 [\$1,004,578 in 2025], an average of \$1,143 per parcel. The study determined that property ownership among African American households in 1837 was 7.7

in New York totaled over \$1 million and approximately \$500,000 in Cincinnati, Baltimore, Washington, and Boston.¹⁶⁹ In the South, by 1860, about 17% of Black households in rural Maryland and Virginia owned some land.¹⁷⁰ But Black home and land ownership was risky. Charles Nier III, citing historian Leon Litwack's *North of Slavery*, recounts how far back the notion that Black homeowners would lower property values went. "As early as 1793, the attempt to locate 'a Negro hut' in Salem, Massachusetts, prompted a white minister to protest that such buildings depreciated property, drove out decent residents, and generally injured the welfare of the neighborhood."¹⁷¹ In many places, laws prohibited Black people from owning property.¹⁷²

When and where legal restrictions on Black homeownership did not exist, white people have used other methods to impose and enforce segregation ranging from racially restrictive covenants to mob violence.¹⁷³ Frederick Douglass lamented, "No man is safe—his life—his property—and all that he holds dear, are in the hands of a mob, which may come upon him at any moment at midnight or mid-day, and deprive him of his all."¹⁷⁴

Black people's legal relationship to land ownership changed when the 1866 Civil Rights Act guaranteed all citizens, "without regard to any previous condition of slavery" the right "to inherit, purchase, lease, sell, hold, and convey real and personal property."¹⁷⁵ But even under this new legal regime, sellers treated white and Black buyers differently. While white buyers traditionally obtained mortgages from banks, many Black

percent, a decline from the rate of 11.6 percent in 1820. [This] property ownership rate was approximately fifty percent of white households.

Id. W.E.B. Du Bois determined that, in 1848, 241 Black households in Philadelphia owned their homes. W.E.B. DU BOIS, *THE PHILADELPHIA NEGRO: A SOCIAL STUDY* 288 (1899).

169. *Id.*

170. *Id.* at 142 (citing LOREN SCHWENINGER, *BLACK PROPERTY OWNERS IN THE SOUTH 1790-1915*, at 52 (1990) ("[I]n 1860, one out of every six African American family heads in rural Maryland and Virginia had managed to become a land owner. Further, one in every seven urban African American families in the upper South managed to acquire land by the eve of the Civil War.")).

171. LEON LITWACK, *NORTH OF SLAVERY: THE NEGRO IN THE FREE STATES 1790-1860*, 169 (1961).

172. See *1857 Transcribed Oregon Constitution*, OR. REC. MGMT. SOL., <https://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/9479967> (on file with the Seattle University Law Review); ROOT CAUSES OF HOUSING AND LAND INJUSTICE, RACE FORWARD, <https://www.raceforward.org/system/files/2024/08/root-causes-of-housing-and-land-injustice-whites-only.pdf> (on file with the Seattle University Law Review); Roy W. Copeland, *In the Beginning: Origins of African American Real Property Ownership in the United States*, 44 J. BLACK STUD. 646-64 (2013).

173. See generally JEANNINE BELL, *HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF RACIAL SEGREGATION IN AMERICAN HOUSING* (2013).

174. Nier, *supra* note 138, at 142 (citing LITWACK, *supra* note 171, at 102).

175. Civil Rights Act of 1866, 42 U.S.C. § 1981-82.

buyers could only buy homes through land installment contracts.¹⁷⁶ Under these contracts, the buyer agreed to make a set number of monthly payments directly to the seller, who retained ownership of the home until receiving the very last payment.¹⁷⁷ If the buyer defaulted on any single payment, they forfeited the entire deal. The seller kept all the money paid up to that point and the buyer walked away with nothing.

C. Banking

The First and Second Banks of the United States did not do business with enslaved people. Like the law, they treated them as property, accepting them as a form of collateral from enslavers.¹⁷⁸ This was a windfall for enslavers, who profited from their enslaved workers' labor while also using them as securitization for loans.¹⁷⁹ This financial boon lasted until the Civil War, which decimated Southern states' banks while eliminating the coerced labor that formed the foundation of their economy.¹⁸⁰

Black people's need for banking services first attracted government attention when Black army units joined the North's military. Because it was not possible for Black (or any) soldiers to carry their pay around with them, their regiment's paymasters let them set aside some of it until discharge.¹⁸¹ In Virginia and South Carolina, Black soldiers could use military savings banks for this purpose. But leaving money in a bank was a riskier proposition for Black soldiers than white soldiers, who could give

176. See Sarah Mancini & Margot Saunders, *Land Installment Contracts: The Newest Wave of Predatory Home Lending Threatening Communities of Color*, 28 CMTYS. & BANKING 9, 10 (2017); Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 113, 129–30 (2009).

177. Mancini & Saunders, *supra* note 176, at 10; Way, *supra* note 176, at 129–30; JEREMIAH BATTLE, JR., SARAH MANCINI, MARGOT SAUNDERS & ODETTE WILLIAMSON, NAT'L CONSUMER LAW CTR., INC., TOXIC TRANSACTIONS: HOW LAND INSTALLMENT CONTRACTS ONCE AGAIN THREATEN COMMUNITIES OF COLOR 3 (2016).

178. *The Financialization of Slavery by the First and Second Banks of the United States*, 87 J. S. HIST. 385 (2021).

179. Brooke Endale, *How Banks Played a Role in Upholding Slavery During the 19th Century*, GW TODAY (Oct. 17, 2023), <https://gwtoday.gwu.edu/how-banks-played-role-upholding-slavery-during-19th-century> [https://perma.cc/G2XT-GNSV].

180. Nier, *supra* note 138, at 151 (citing ROGER L. RANSOM & RICHARD SUTCH, ONE KIND OF FREEDOM: THE ECONOMIC CONSEQUENCES OF EMANCIPATION xii, 52 (1977)).

[I]n 1860, Georgia and South Carolina had a total of forty-nine state-chartered banks. After the Civil War, only four of those banks remained in business. . . . [I]n the three years following the Civil War only 20 of the 1,688 national banks established were located in Southern states [S]tate-chartered and private banks were unable to fill the credit vacuum created by the dearth of national banks.

Id.

181. Julie Huffman, *The Freedman's Bank Was a First Step for Newly Freed Black Citizens*, LAPL BLOG (June 17, 2020), <https://www.lapl.org/collections-resources/blogs/lapl/freedmans-bank-was-first-step-newly-freed-black-citizens> [https://perma.cc/MLX3-9JTR].

their banks detailed information about their families and guidance on what to do with any unclaimed funds. Black families often had no fixed address or formal identification, making it difficult for them to withdraw money left to them by a soldier who died on the battlefield. In some cases, Black soldiers who transferred to different regions or left the service altogether did not know how to withdraw their savings. Some banks had up to \$200,000 of unclaimed funds when the war ended.¹⁸²

To address Black people's banking needs, Lincoln established the Freedman's Savings and Trust Bank in 1865 as part of the larger Freedmen's Bureau.¹⁸³ The bank ultimately failed, making room for other, more predatory creditors to take its place and seeding an enduring mistrust in traditional banks.¹⁸⁴ Replacing financial institutions, merchants took on an outsized role in Black finances, operating similarly to the trading posts that came to dominate Indigenous communities.¹⁸⁵ Historian Thomas Clark quotes a source who asserts that, in early twentieth-century Black communities, the "store was the hub of the local universe. It was the market place, banking and credit source, recreational center, public forum, and news exchange." Clark observes that "[w]ith financial institutions unwilling or unable to provide short-term credit, the merchant rapidly filled this decisive financial vacuum. Indeed, with few people able to pay with cash, the merchant almost exclusively operated with credit."¹⁸⁶

III. CREDIT DISCRIMINATION VIOLATES THE RECONSTRUCTION AMENDMENTS

Proverbs 22:7 warns that "the borrower is slave to the lender."¹⁸⁷ In *Hamlet*, Polonius advises the Danish prince "neither a borrower nor a lender be."¹⁸⁸ In the 2025 comedy, *One of Them Days*, Lucky (played by Katt Williams) begs Alyssa (Sza) and Dreux (Keke Palmer) not to take out

182. Minority Banking Timeline, 1865: Freedman's Savings and Trust Company, Partnership for Progress, PARTNERSHIP FOR PROGRESS, <https://www.fedpartnership.gov/minority-banking-timeline/freedmans-bank> [https://perma.cc/6JB8-PSHP] (last visited Oct. 15, 2025). That is almost \$4 million in 2025.

183. See JUSTENE HILL EDWARDS, THE RISE AND BETRAYAL OF THE FREEDMAN'S BANK SAVINGS AND TRUST (2024) for a comprehensive history of the bank.

184. See generally, Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap* (2017).

185. Nier, *supra* note 138, at 152–53 (citing EDWARD AYERS, THE PROMISE OF THE NEW SOUTH 81 (1992)). In the late 1800s, the South had 150,653 general stores. *Id.*

186. *Id.* at 153 (citing RANSOM & SUTCH, *supra* note 180, at 126 (quoting THOMAS CLARK, PILLS, PETTICOATS AND PLOWS: THE SOUTHERN COUNTRY STORE vii–viii (1944))).

187. Proverbs 22:7 (New International Version).

188. WILLIAM SHAKESPEARE, *HAMLET* act 1, sc. 3, I. 75.

a payday loan with a 1900.5% interest rate.¹⁸⁹ This is a timeless story: Even a small loan can lead to a debilitating debt spiral, costing the borrower a pound of flesh.¹⁹⁰

Nonetheless, debt is a key component of capitalism. We accept that corporations, including banks, will single-mindedly pursue profits. But fairness is also part of the national zeitgeist. Credit discrimination is illegal under the Fair Credit Opportunity Act and the Community Reinvestment Act, at least on paper. In practice, weak standards and loose enforcement have rendered these laws ineffectual in preventing racialized debt oppression.¹⁹¹

Credit discrimination is not just unlawful. It is also unconstitutional. The modern Court has contorted the definition of racism, ignoring structural oppression and focusing only on bad actors. That renders it unlikely to acknowledge these constitutional violations and provide remedies. Although it may not be possible to convince the current Court that racial discrimination matters, the conviction that debt oppression is unconstitutional can still spark a social movement.

The Fourteenth Amendment guarantees equal protection under the law. Yet, laws governing credit scoring, access, and terms allow the credit industry to treat consumers differently based on their race without exposure or recourse. These are clear Fourteenth Amendment violations. And the history of debt oppression that stretches from colonization and enslavement to the present establishes that discriminatory credit laws and policies violate the Thirteenth Amendment.

The Thirteenth Amendment protects people living in the United States, not only from enslavement and involuntary servitude,¹⁹² but also from the vestiges of slavery.¹⁹³ Interpreting the Amendment in a crucial early test of its power, the Civil Rights Cases, the Court held that vestiges, markers, badges, and incidents of slavery are unconstitutional.¹⁹⁴ That ruling is still good law, making discriminatory practices rooted in enslavement that have lasted into the present unconstitutional. The history of debt oppression from chattel slavery to the present clearly establishes that throughline.

The Court held that housing discrimination is a vestige of slavery in *Jones v. Alfred H. Mayer*.¹⁹⁵ In *Jones*, Joseph Lee Jones, a Black man,

189. *One of Them Days* (Comedy Central 2025).

190. See WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* act 1, sc. 3, l. 147 (Shylock proposing that Antonio's default on a loan would cost him a pound of flesh).

191. See generally Freeman, *Payback*, *supra* note 25.

192. U.S. CONST. amend. XIII, § 1.

193. Civil Rights Cases, 109 U.S. 3, 20–22 (1883).

194. *Id.*

195. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

brought a suit against white home owners in Missouri's St. Louis county for refusing to sell him a house in the Paddock Woods community because of his race.¹⁹⁶ Jones alleged that their refusal violated Section 1982 of the Civil Rights Act, which promises that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase lease, sell, hold, and convey real and personal property."¹⁹⁷ The Eighth Circuit affirmed the district court's dismissal of the case based on Congress's inability to govern private, as opposed to state, discrimination. Plaintiffs appealed to the Supreme Court, asking it to confirm that Congress had authority to enact a law prohibiting both private and government discrimination.¹⁹⁸

The homeowners argued that Congress enacted the Civil Rights Act for the sole purpose of abolishing the Black Codes.¹⁹⁹ The Court insisted there was more to it than that. It pointed to "[a]ccounts in newspapers North and South, Freedmen's Bureau and other official documents, private reports and correspondence . . ." to show that

'private outrage and atrocity' were 'daily inflicted on freedmen.' The congressional debates are replete with references to private injustices against Negroes—references to white employers who refused to pay their Negro workers, white planters who agreed among themselves not to hire freed slaves without the permission of their former masters, white citizens who assaulted Negroes or who combined to drive them out of their communities.²⁰⁰

The Court acknowledged that, "even if anti-Negro legislation were 'repealed in all the States lately in rebellion,' equal treatment for the Negro would not yet be secured."²⁰¹ The Court definitively declared that

Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation. Nor can we say that the determination Congress has made is an irrational one. For this Court recognized long ago that, whatever else they may have encompassed, the badges and incidents of slavery—its 'burdens and disabilities'—included restraints upon 'those fundamental rights which are the essence of civil freedom, namely, the same right . . . to

196. *Jones*, 392 U.S. at 412.

197. *Id.* at 412–13.

198. *Id.* at 412.

199. *Id.* at 426.

200. *Id.* at 427.

201. *Id.* at 429.

inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens.’²⁰²

The Court laid out the steps that made the inability to buy property in white neighborhoods a vestige of slavery: “[W]hen racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.”²⁰³ It noted that the Thirteenth Amendment would be

a mere paper guarantee if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live.²⁰⁴

The Court saw a clear connection between residential segregation as a tool of enslavement and modern housing discrimination. Enslavers housed the people they enslaved in separate and inferior living quarters to enforce white supremacy. After Emancipation, white people did not abandon residential segregation, despite the Reconstruction Amendments and Civil Rights Act’s insistence on formal equality. Instead, they doubled down on it. They used racially restrictive covenants to keep Black people from buying houses in white communities.²⁰⁵ They leveraged zoning laws²⁰⁶ and spent taxpayer money to build bridges, walls, and highways to exclude Black people from white neighborhoods.²⁰⁷ The Paddock Woods’ homeowners’ refusal to sell a house to Joseph Lee Jones was a direct product of enslavers’ insistence on housing enslaved workers’ in separate and inferior structures.

Confronted with modern laws and policies that distribute debt unequally, the Court should apply *Jones*’ reasoning and hold that debt discrimination is unconstitutional. The historical record, documented here and in forthcoming articles in this series, establishes the throughline from

202. *Id.* at 441.

203. *Id.* at 442–43.

204. *Id.* at 443.

205. See generally *Shelley v. Kraemer*, 334 U.S. 1 (1948) (refusing to enforce a racially restrictive covenant to avoid violating the Fourteenth Amendment).

206. See generally Jade A. Craig, *Pigs in the Parlor: The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South*, 40 MISS. C. L. REV. 5 (2022); Sarah J. Adams-Schoen, *The White Supremacist Structure of American Zoning Law*, 88 BROOK. L. REV. 1225.

207. See generally, e.g., DEBORAH N. ARCHER, *DIVIDING LINES: HOW TRANSPORTATION INFRASTRUCTURE REINFORCES RACIAL INEQUALITY* (2025); Erin Einhorn & Olivia Lewis, *Built to Keep Black from White*, NBC NEWS (July 19, 2021), <https://www.nbcnews.com/specials/detroit-segregation-wall/> [https://perma.cc/G4MS-SCTG].

colonization, enslavement, and annexation to modern debt oppression. To be continued...